



# COUNTY OF ORANGE

RESOURCES & DEVELOPMENT MANAGEMENT DEPARTMENT

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February 18, 2004

Craig J. Wilson, Chief  
TMDL Listing Unit  
Division of Water Quality  
State Water Resources Control Board  
P.O. Box 100  
Sacramento, CA 95812-0100

**Subject: Draft Water Quality Control Policy for Developing California's Clean Water Act Section 303(d) List and Draft Functional Equivalent Document**

Dear Mr. Wilson:

The County of Orange Resources and Development Management Department (formerly Public Facilities and Resources Department) has reviewed the draft Clean Water Act (CWA) Section 303(d) Listing Policy and Functional Equivalent Document. We have previously provided oral comments on the policy at the public hearing held on February 5, 2004, where we emphasized the core purpose of CWA Section 303(d) as a way of identifying high priority water quality problems. We appreciate this opportunity to provide more detailed information and comments on the proposed policy.

First, we would like to commend State Board staff for their efforts to develop the proposed Listing Policy. Your accessibility and willingness to answer questions and clarify issues raised by County of Orange staff during the review of these documents has been extremely helpful. We strongly support the State Board's goal of establishing a standardized approach for assigning water bodies to the State's 303(d) list.

We feel that the policy is thorough and well reasoned. The statistical issues are clearly addressed and the alternatives chosen appear to be well balanced and to take into account real world variability and sampling problems. In addition, the discussion is sensitive to the ramifications of mistakenly listing large numbers of water bodies that actually do not exceed standards. We endorse the inclusion of requirements for data quality and quantity, for consistent and statistically valid data evaluations, and provisions for implementation. We also strongly support the elements of the Listing Policy that will ensure that the listing process is "transparent," including the requirements for fact sheets, public hearings by Regional Boards, and opportunities to comment on the list prior to review by the State Board.

We continue, however, to have a number of concerns regarding the draft policy. These concerns are as follows:

1. Structure of the List -- The State Board has moved away from an "integrated" water quality assessment report format as was proposed in the July 2003 Draft Policy for Guidance on Assessing California Surface Waters. We believe that the 303(d) list should only include those waters that do not attain water quality standards due to pollutants and for which a TMDL is required. Water bodies for which TMDLs are already completed or where enforceable programs are in place to bring the water into attainment should be placed on separate lists.
2. Re-evaluation of Previous Listings -- We commend the State Board for providing a mechanism for re-evaluation of water bodies identified on previous 303(d) lists using the Listing Policy once it is finalized. However, to ensure that TMDLs are conducted only where appropriate and necessary, we request that the State Board require a re-evaluation of water bodies identified on the 2002 303(d) list, when requested to in writing by an interested party (with the burden on the party to make the case as to why the listing should be found to be invalid or inappropriate), and not limit the re-evaluation to solely instances where new data or information are available. This recommendation is consistent with the July 2003 Draft Policy and will assist in prioritizing scarce State resources. If re-evaluation reveals that the data used for the original listing do not support a current listing under the new policy, then additional resources should not have to be expended to "prove the negative" in order to remove the listing .
3. Sections 3.1.1, 3.1.2, 3.1.3, 3.1.5, 3.1.7, 3.1.8 and 3.1.9 propose listing of water bodies based on exceedances of objectives using a 90% confidence level. The Proposed Listing Policy, however, does not adequately take into account the time and season over which the samples are taken and whether the samples are representative of the water body in question and should be further clarified.

For example, it is well documented that seasonality (dry and wet weather conditions being the most obvious example) plays a significant part in pollutant concentration and loading. Pollutants carried by stormwater during the rainy season tend to have higher loadings and shorter durations than pollutants carried by nuisance water during the nonrainy season. The variability of storm events (rainfall, runoff, antecedent moisture conditions etc.) is such that two monitoring events as indicated in Section 6.2.5.4 are unlikely to result in a representative characterization of the conditions in the water body and could require the expenditure of significant resources to rectify an inappropriate listing. The Proposed Listing Policy should therefore recognize that additional data collection may be necessary under such conditions.

4. Within Section 3.1.8, Adverse Biological Response, the proposed metrics to assess biological degradation should be conducted over a number of years (2-3) to accurately assess the impairment of the community. Using short term measurements may not be indicative of the long term effects on the community.
5. In Section 3.1.11, Alternate Data Evaluation, it is not clear if all or only a few of the justifications provided need to be met for listing on the 303(d) list. It is also not clear if only the exceedance frequency or biological and physical parameters will be used as the basis for listing. Exceedance frequency by itself may not be representative of an impairment unless it can be shown that there is biological

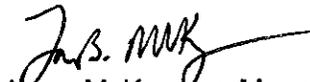
degradation to the community or physical degradation to the water body that is negatively impacting the community.

6. In Section 3.3, Enforceable Program Category Factors, the last sentence of the first paragraph states that all of the factors listed should be met for a pollutant to be considered under the enforceable program. It should be noted that the conditions listed as minimum requirements might be met by existing or future permits but the permits might need to be modified to contain the proposed conditions.
7. It is recommended that the last part of the first paragraph in Section 3.3 be modified as follows: "and the program includes the following conditions:"
8. The last sentence in Section 4 should be revised to clearly state that a water body can be removed from the 303(d) list if the applicable section requirements under which it was originally placed are no longer applicable. The sentence can now be interpreted to read that all conditions listed in the section must be met prior to delisting a water body. For instance, Section 4.3 is intended solely for bacteria and the impairing pollutant may be a metal. In this case, it does not make sense to require this section to be met.
9. In Section 6.2.2.1, the last bullet regarding citizen groups under Data Solicitation should be clarified. The current statement may be interpreted as suggesting that only the training received by such a group needs to be identified. It should be made clear that of the requirements under Data Solicitation, including quality assurance procedures, are also required for citizen group data.

Lastly, we would like to express our appreciation to the State Board for holding the additional public hearing on this policy in Torrance on February 5, 2004. Holding the hearing locally in Southern California facilitated the participation of many local governments and stakeholders. We appreciate your efforts to include all stakeholders in this important issue.

If you have any questions regarding these comments, please call Amanda Carr at 714-567-6367.

Sincerely,



Larry McKenney, Manager  
Watershed and Coastal Resources Division